

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

UNITED STATES OF AMERICA,

CASE NO. 8:03CR163

Plaintiff,

vs.

MEMORANDUM AND ORDER

JORGE A. ARONJA-INDA,

Defendant.

This matter is before the Court on the Defendant's notice of appeal (Filing No. 129) and the copy of the memorandum submitted by the Clerk (Filing No. 130).

The Defendant pleaded guilty to Count I of the Indictment charging him with conspiracy to distribute and possess with intent to distribute several controlled substances. The written plea agreement included a waiver of appellate rights. The Defendant was sentenced to 324 months imprisonment and 5 years supervised release. The Eighth Circuit Court of Appeals dismissed the appeal, concluding that the Defendant's appeal was barred by the written waiver. The Court concluded that other sentencing issues raised fell within the appeal waiver, and therefore the Court declined to address those issues. The Supreme Court denied the petition for a writ of certiorari.

The Defendant filed a motion pursuant to Federal Rule of Civil Procedure 60(b), arguing only that he challenges a “defect in the proceeding” resulting from an “intervening change in controlling Supreme Court law” and that the motion should not be construed as a motion to vacate pursuant to 28 U.S.C. § 2255. (Filing No. 127.) The Court denied the motion. (Filing No. 128.) The Defendant filed a notice of appeal. (Filing No. 129.) The Clerk requests guidance since no appeal fee was received and a motion for leave to proceed in forma pauperis was not received. (Filing No. 130.)

Defense counsel was retained at the district court level but appointed by the Eighth Circuit. (Filing No. 103.) Federal Rule of Appellate Procedure 24 provides that one who was determined to be financially unable to obtain an adequate defense in a criminal case may proceed on appeal in forma pauperis without further authorization unless the district court “certifies that the appeal is not taken in good faith or finds that the party is no otherwise entitled to proceed in forma pauperis and states in writing its reasons for the certification or finding.” Fed. R. App. P. 24(a)(3)(A).

In this case, the Defendant has exhausted the direct appeal process. Specifically, he stated that his Rule 60(b) motion was not a motion filed pursuant to 28 U.S.C. § 2255. The civil rules of procedure have no bearing on this criminal case. For these reasons, this Court certifies that the appeal is frivolous and not taken in good faith.

IT IS ORDERED that the Defendant is denied leave to proceed in forma pauperis.

DATED this 8th day of June, 2006.

BY THE COURT:

S/Laurie Smith Camp
United States District Judge